

APPEAL NO. 010464

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing was held on January 29, 2001. With respect to the issues before him, the hearing officer determined that the appellant (claimant) was not in the course and scope of his employment at the time of his injury on _____, and that the claimant did not have disability within the meaning of the 1989 Act because he did not sustain a compensable injury.

DECISION

A timely appeal not having been filed, the decision and order of the hearing officer have become final pursuant to Section 410.169.

Pursuant to Section 410.202 and Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE §143.3(c) (Rule 143.3(c)), an appeal is presumed to be timely if it is mailed not later than the 15th day after the date of receipt of the hearing officer's decision and received by the Texas Workers' Compensation Commission (Commission) not later than the 20th day after receipt of the hearing officer's decision. Both portions of Rule 143.3(c) must be complied with in order for an appeal to be timely. Texas Workers' Compensation Commission Appeal No. 94065, decided March 1, 1994; Texas Workers' Compensation Commission Appeal No. 94111, decided March 10, 1994; Texas Workers' Compensation Commission Appeal No. 941225, decided October 24, 1994. Records of the Commission show that the hearing officer's decision was mailed to the claimant on February 5, 2001. In accordance with Rule 102.5(d), the claimant was deemed to have received it five days after it was mailed or on February 10, 2001. Accordingly, the claimant had until Monday, February 26, 2001, to timely file his request for review with the Commission, because the 15th day after the deemed date of receipt fell on Sunday, February 25, 2001. Rule 102.3(a)(3). The claimant's appeal was mailed to the Commission on March 1, 2001. Accordingly, the appeal is untimely, having been sent to the Commission more than 15 days after the deemed date of receipt of the hearing officer's decision.

The appeal being untimely, the jurisdiction of the Appeals Panel was not properly invoked and the decision and order of the hearing officer have become final under Section 410.169.

Elaine M. Chaney
Appeals Judge

CONCUR:

Judy L. S. Barnes
Appeals Judge

Michael B. McShane
Appeals Judge